



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 29, 2011

Mr. Marc Allen Connelly  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2011-04298

Dear Mr. Connelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412763 (DSHS File: 18502/2011).

The Texas Department of State Health Services (the "department") received a request for the status of the 2009-2010 electronic data pertaining to all deaths in Texas.<sup>1</sup> You claim that portions of the requested information are excepted from disclosure under section 552.115 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they are not among the types of information the

---

<sup>1</sup>Based on the submitted correspondence, we understand the requestor is seeking the following information pertaining to individuals who died in Texas during 2009 and 2010: first and last name, last known address, date of birth, date of death, and the cause of death.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision* Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requestor seeks. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

We note, and you acknowledge, the department failed to comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See id.* § 552.301(b), (e). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.115 of the Government Code can provide a compelling reason to withhold information, we will consider your argument under this section.

Next, we address the requestor's contention that the requested information is the same as the information at issue in Open Records Letter No. 2005-10285 (2005) and, thus, subject to that previous ruling. We note the information at issue in Open Records Letter No. 2005-10285 pertained to deaths from 1999 to 2005. We also note Open Records Letter No. 2005-10285 is specifically limited to the particular information at issue in that ruling and states "this ruling must not be relied upon as a previous determination regarding any other information[.]" *See* Open Records Letter No. 2005-10285 (2005) at 3. The information requested in the instant request pertains to deaths from 2009 to 2010. Although the type of information sought in the present request is similar to the information ruled upon in Open Records Letter No. 2005-10285, it is not the precise information previously ruled upon. Therefore, because the information responsive to the present request is not identical to the information at issue in Open Records Letter No. 2005-10285, the department may not rely upon that ruling as a previous determination for the submitted information. *Cf.* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we address the department's argument against disclosure of the submitted information.

You state the submitted documents contain information drawn from records filed with a local registration official or the department's bureau of vital statistics (the "bureau"). You assert most of the requested information should be withheld under section 552.115 of the Government Code. This section excepts from disclosure death records held by either the bureau or local registration officials. Section 552.115 provides, in relevant part:

(a) A . . . death record maintained by the bureau of vital statistics of the Texas Department of Health<sup>3</sup> or a local registration official is excepted from [required public disclosure], except that:

. . .

(2) a death record is public information and available to the public on an after the 25th anniversary of the date of death as shown on the record filed with the bureau of vital statistics or local registration official;

(3) a general birth index or a general death index established or maintained by the bureau of vital statistics or a local registration official is public information and available to the public to the extent the index relates to a birth record or death record that is public information and available to the public under Subdivision . . . (2); [and]

(4) a summary birth index or a summary death index prepared or maintained by the bureau of vital statistics or a local registration official is public information and available to the public[.]

Gov't Code § 552.115(a)(2)-(4). You state the records you seek to withhold each relate to individuals whose date of death is less than 25 years old. However, section 552.115(a)(4) provides that summary death indexes are public information excluded from confidentiality under section 552.115(a). *See id.* § 552.115(a)(4). Although the Act does not define "summary death index," the department has issued administrative rules that define this term in section 181.23 of title 25 of the Texas Administrative Code.<sup>4</sup> Section 181.23 provides, in part:

(c) Death indexes.

. . .

---

<sup>3</sup>Act of Sept. 1, 2003, 78th Leg., R.S., ch. 198, § 1.01, 2003 Tex. Gen. Laws 611 (providing, among other things, that the Texas Department of Health is part of the department).

<sup>4</sup>Generally, a governmental body may not issue a rule that makes confidential information that is otherwise subject to public disclosure under the Act. *See* Open Record Decision Nos. 484 (1987), 392 (1983). However, this office has found that the legislature granted specific authority to the Texas Department of Health to issue administrative rules regarding the public availability of information contained in or derived from vital records. *See* Open Records Decision No. 596 (1991).

(3) A summary death index maintained or established by the bureau of vital statistics or a local registration official shall be prepared by event year, in alphabetical order by surname of the registrant, followed by any given names or initials, the date of the event, the county of occurrence, and sex of the registrant.

*See* 25 T.A.C. § 181.23(c)(3). Thus, section 181.23 prescribes the format of death indexes required to be compiled and maintained by the bureau. Although you state that the department does not maintain a specific summary death index as such, we understand from your description that the department does maintain a database that contains the information that would be included in a summary death index, from which such an index could be compiled. In this instance, the requestor seeks first and last names, dates of birth, dates of death, last known addresses, and causes of death. The summary death index as prescribed by the above regulations contains the registrants' first and last names and dates of death. Summary death indexes are declared in subsection (a) of section 552.115 to be "public information and available to the public." *See* Gov't Code § 552.115(a)(4). Thus, pursuant to section 552.115(a)(4), the first and last names and dates of death in the submitted records are not excepted from required public disclosure under section 552.115(a). As you have not raised any other exceptions for this information, it must be released to the requestor.

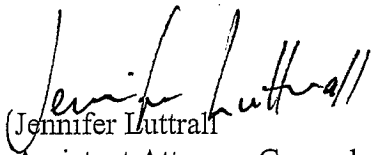
However, we note the requestor seeks, and the submitted information contains, more information than would be contained within the summary death index as prescribed by section 181.23. The summary death index includes the county of death, but does not include the last known address of the decedent as sought by the requestor. *See* 25 T.A.C. § 181.23(c)(3). The summary death index also does not include the requested dates of birth or the causes of death. We believe the purpose behind section 552.115 of the Government Code, that of preventing fraud, is one of the purposes behind the above-quoted administrative rules that dictate certain categories of information that comprise each type of death index. Because the remaining categories of information in the submitted information are not public information under section 552.115, and the above-referenced administrative rules do not provide for the release of this information, we believe this information, derived from or related to a source death record, is made confidential under section 552.115(a) of the Government Code. Therefore, the department must withhold the submitted dates of birth, last known addresses, and causes of death, all of which we have marked, under section 552.115(a) of the Government Code.

In summary, the department must withhold the marked dates of birth, last known addresses, and causes of death under section 552.115(a) of the Government Code. The remaining responsive information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

  
(Jennifer Luttrall)  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 412763

Enc. Submitted documents

c: Requestor  
(w/o enclosures)